

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF:

**MORGAN COUNTY SCHOOL SYSTEM,
Petitioner,**

vs.

NO. 00-33

**K.S., Parent and Guardian of
J.K.S., a Disabled Child,**

Respondent.

MEMORANDUM OPINION and FINAL ORDER



WILLIAM T. AILOR

Administrative Law Judge
Ailor Law Offices
603 Main Avenue, Suite 401
(865) 525-9326
Knoxville, TN 37902

August 23rd, 2000

MEMORANDUM OPINION

AND

FINAL ORDER

Case No. 00-33

This cause was heard before WILLIAM T. AILOR, Administrative Law Judge for the Tennessee State Department of Education of Education, on the 21st day of June, 2000, at the Morgan County School System. At the hearing were Melinda M. Baird, attorney for the School System, Suzanne Michelle, attorney for the Respondents, Ms. Carolyn Shannon, Director of Special Education for Morgan County School and Mr. & Mrs. S, parents of the child, as well as a reporter from the local newspaper.

The issue to be determined by the Court is whether or the not the School System has the right to require the child to be evaluated or re-evaluated and if the parents refuse to allow the School System to conduct an evaluation or re-evaluation whether or not this Court has the authority to order the evaluation.

The School System called Ms. Carolyn Shannon, Ms. Tracy Sumner, Mr. Kerry Beard and Dr. Thomas Oakland as witnesses. The Respondents called the mother as the only witness.

FACTS

J.K.S. is a Special Ed student in Morgan County Schools and has been receiving Special Education and related services since entering pre-school in the fall of 1990. On March 7, 2000 Ms. Carolyn Shannon, Special Education Director for Morgan County Schools met with the mother to discuss what would be addressed at the IEP Team meeting on March 10, 2000. On March 8, 2000 notice of an IEP Team meeting is sent by the School System which stated that the Assistive Technology evaluation and re-evaluation or triennial evaluation will be discussed. March 10, 2000 an IEP Team meeting was held to discuss the AT evaluation and the triennial evaluation. Mr. Kerry Beard took notes of the meeting on a sheet titled "Special Education Committee Minutes" which is Exhibit 2 in the record. On page 1 the first entry is "technical evaluation/re-evaluation and possible early re-evaluation arrow with an * re-evaluation done PRIV" the asterisk refers to the bottom of the page which states "see back of minutes for additional" and the bottom of the page is cut off referring to the second page which would have been the back of the minutes page there is no reference to the re-evaluation. The parents rely heavily on an audio tape which is Exhibit 18 in the record of the IEP Team meeting of March 10, 2000 and a purported transcript of the same which is Exhibit 7 in the record.

Subsequent to the March 10, 2000, Ms. Suzanne Michelle, attorney for the parents, sent a letter to Ms. Shannon stating that she is requesting that J.K.S.'s triennial evaluation be conducted by neuro-psychologist Judith Kaas-Weiss and that the School System pay for it. This is Exhibit 3 in the record. On April 3, 2000, Ms. Shannon responded with a letter which is Exhibit 4 in the record which

states that “Morgan County Schools is requesting permission to do a triennial evaluation with parent consent. (Federal Register 300.321 - Re-evaluations.) To our knowledge no disagreement with the public evaluation has been expressed during the past three (3) years. Your request for the evaluation to be conducted by a neuro-psychologist can be considered.” And she attached a list of “qualified evaluators in our geographical location.” Then she referred to (Federal Register 300.502 - Independent Educational Evaluation.) (Exhibit 4). This letter is followed by a letter dated April 6, 2000 which is Exhibit 5 in the record which is from Ms. Michelle to Ms. Shannon. This letter states that “according to the regulations, Morgan County must either provide the evaluation or request a Due Process Hearing. (This student) will be seen by Judith Weiss, Ph.D. for an evaluation.” Ms. Michelle in her post trial brief characterized this letter as “asking for clarification as to whether Morgan County will apply for evaluation” (Post Hearing Brief of K.S. page 5). This letter is followed by a letter from Ms. Melinda Baird, attorney for the School System, which states that the School System has an absolute right to perform a three (3) year re-evaluation and that the School System is requesting the parents’ written consent for Dr. Thomas Oakland to conduct the comprehensive neuro-psychological evaluation. This letter is Exhibit 6 of the record. It further states that the parents’ request for an independent evaluation by Dr. Weiss is “premature and cannot be considered until the School System has completed its’ re-evaluation.”

On April 19, 2000 Ms. Michelle sent a letter to Ms. Baird offering to pay for Dr. Weiss’ evaluation and stating that the mother, “will withdraw her request for an independent evaluation if the School will withdraw its’ request to have (J.K.S.) evaluated by Dr. Thomas Oakland.” (Exhibit

8) This letter is responded to by one from Ms. Baird dated April 26, 2000 which is Exhibit 9 in the record which states, "the School System remains committed to completing a comprehensive evaluation of (J.K.S.) as required by 20 U.S.C. § 1414(a)(2) and Tennessee State Rules and Regulations." Ms. Baird goes on to state that they desire to have Dr. Oakland perform the evaluation and once again request the mother's written consent.

Ms. Michelle responded on May 17, 2000 with a letter stating, "I want to be clear that (the mother) will not permit Dr. Oakland to evaluate her child." (Exhibit 10 in the record)

PROOF

Ms. Shannon testified that she was the Special Education Director for Morgan County Schools and had been so for ten (10) years. She had taught as a Resource Special Education Teacher for approximately nine (9) years holding a Master's Degree with forty-five (45) hours above in Special Education and a Bachelor's Degree in Elementary Education.

Ms. Shannon testified regarding an IEP team meeting which was held on March 10, 2000 for J.K.S. Ms. Shannon testified that Mr. Kerry Beard, at Ms. Shannon's request, had taken minutes of the IEP team meeting on March 10, 2000. She testified that the documents showed that the purpose of the meeting was for "technical evaluation/re-evaluation and possible early re-evaluation" (TR page 36, lines 11-12 and Exhibit 2). Ms. Shannon testified that this student was scheduled to be reviewed for a triennial re-evaluation in June of 2000 so she wanted to mention that the School System desired to re-evaluate him at this meeting. Ms. Shannon recalled that the mother had said that she would like to have a private evaluation preformed and said that she had told the mother that she had every right

to do so. Ms. Shannon testified that the mother wanted Dr. Judith Weiss, Ph.D. to perform the independent evaluation. She further testified that she said, “an independent evaluation, (we) need to do our evaluation first” (TR page 38, lines 9-12). The mother disputes this, and the tape of the meeting do not have clear statements indicating that Ms. Shannon made those statements. Ms. Shannon testified that the meeting was “long and lengthy, and this was during the school day” so as a result they did not get to fully discuss the re-evaluation (TR page 39, lines 4-6).

After the IEP Team meeting, Ms. Suzanne Michelle, attorney for the parents, sent a written request to have Dr. Judith Weiss perform the triennial evaluation and have Morgan County Schools pay for the evaluation (Exhibit 3). Ms. Shannon testified that she was, “stunned because (she) thought, well the lawyer knows that we’ve got to do our evaluation first, because that’s the reason for an independent evaluation, to disagree, if you disagree” (TR page 40, lines 22-25). Ms. Shannon then testified as to a letter dated April 3, 2000 which she wrote to Ms. Michelle in which she was requesting the parents permission to conduct a triennial evaluation with the parents consent and stated “to our knowledge no disagreement with the public evaluation has been expressed during the past three (3) years” (Exhibit 4). She then testified to a letter which she received from Ms. Michelle dated April 6, 2000 which stated that “according to the regulations, Morgan County must either provide the evaluation or request a Due Process Hearing . J.K.S. will be seen by Dr. Weiss, Ph.D. tomorrow for an evaluation” (Exhibit 5). Ms. Shannon then testified that she called Ms. Baird who responded to Ms. Michelle’s letter in correspondence dated April 18, 2000 which states that the “School System has the absolute right to evaluate J.K.S. by professionals of its’ own choosing” (TR page 44, lines

10-11, and Exhibit 6). Further, the letter requested the parent's written consent for Dr. Thomas Oakland to conduct a comprehensive neuro-psychological evaluation. Ms. Baird enclosed a consent form for the parents to sign. The letter further states "your request for an "independent educational evaluation" by Dr. Judith Kaas-Weiss is therefore premature and will not be considered until the School System has completed its' re-evaluation" (Exhibit 6). Ms. Shannon testified without objection to a letter which was sent by Ms. Michelle to Ms. Baird dated April 19, 2000 which stated, "I am hoping to avoid making Dr. Oakland an issue. Ms. S is offering to pay for Dr. Weiss' evaluation of J.K.S. and will withdraw her request for an independent evaluation if the School System will draw its' request to have J.K.S. evaluated by Dr. Oakland. The School can go ahead and have its' usual School Psychologist do the triennial evaluation if it so desires" (TR page 49, lines 23-25 thru page 50, lines 1-5, Exhibit 8). Ms. Shannon then testified that she did not have a staff member who had the credentials to conduct a neuro-psychological evaluation.

Then Ms. Shannon testified to a letter from Ms. Baird to Ms. Michelle dated April 26, 2000 which stated in part, " "finally the School System remains committed to completing a comprehensive re-evaluation of J.K.S. as required by 20 U.S.C. § 1414(a)(2) and Tennessee State Rules and Regulations... However the School System wishes to retain Dr. Thomas Oakland to conduct a neuro-psychological evaluation of J.K.S. as soon as possible. The results of this evaluation will be essential in the development of J.K.S.'s IEP for the 2000 - 2001 school year... Therefore, I would reiterate my previous request for Ms. S's written consent to Dr. Oakland's evaluation and ask that you have your client execute the consent forms provided for this purpose" " (Exhibit 9 and TR page 51, lines

8-25). Ms. Shannon then testified without objection to a letter dated May 17, 2000 from Ms. Suzanne Michelle to Ms. Melinda Baird which states in part, "I want to be clear that Ms. S. will not permit Dr. Oakland to evaluate her child" (Exhibit 10 and TR page 52, lines 17-18).

On cross-examination, Ms. Michelle asked Ms. Shannon about the IEP Team meeting and the discussion with regard to the three (3) year evaluation. Ms. Shannon was asked if they discussed the three (3) year evaluation at the March 10, 2000 meeting. Ms. Shannon replied, "we brought it up at the end of the meeting" (TR page 59, lines 3-4). Ms. Shannon was asked if she had ever asked the mother for permission to evaluate her son to which Ms. Shannon responded, "no, no this was an explanation of what we would do. My intent was to sit down and go over our 2 sheets of review and seeing where we were. We had our files ready, Mr. Beard had his files ready and we would go over that review, which never occurred" (TR page 61, lines 20-25). Ms. Shannon was asked if she ever gave the mother a request for consent or a release for the three (3) year evaluation. Ms. Shannon responded, "no, I don't think we did, because we didn't go through all of our other forms, no", (TR page 62, lines 4-5). Ms. Shannon was asked about comments which she made in the IEP Team meeting wherein she said, "independent evaluations should get one (1); is that one (1) per year?", (TR page 63, lines 21-22). She said that she was "talking about after we evaluate, then you get to do an independent evaluation, you get to have one (1). I am not sure why I said one (1). You get to have one (1). You get to do one (1) after we do our evaluation. You get to have your own independent. You get to say, I don't like your evaluation, School System, I want to do my own", (TR page 63, line 25 thru page 64, 1-6). Ms. Michelle asked Ms. Shannon about line 13 of page 3

of the partial transcript of the IEP Team meeting wherein Ms. Shannon said, “and then, if you do that--- okay, I don’t think you have to sign anything, okay, because they do their own--- see, my paperwork was for an input from you, but they will get that when they do an independent. So, I just need a letter for that one. Now---”, to which Ms. Shannon explained, “what I am saying here is, that’s fine, if you want to an independent evaluation you can do that; I don’t need a signature, I just need a request for that independent evaluation”, (TR page 67, lines 12-21 and Exhibit 7). When asked by Ms. Michelle on cross-examination about Dr. Weiss and her qualifications and whether or not Ms. Shannon had any objections to Dr. Weiss’ qualifications, Ms. Shannon stated that she felt that it was odd that Dr. Weiss had an association with Tennessee Protection and Advocacy, the corporation which represented the parents and which Ms. Michelle works for in this matter. And that she has had an association with them for twenty (20) years or so (TR page 80).

On direct examination by Ms. Baird, Ms. Shannon was asked if the School System had waived their right to do a re-evaluation of this child in the March 10, 2000 IEP Team meeting to which Ms. Shannon replied, “no, ma’am. In no way did I waive my right”, (TR page 39, lines 14-18). When asked on re-direct examination if it had ever been the intent of the School System to waive its’ right to an evaluation choosing their own evaluator, Ms. Shannon replied, “absolutely not”, (TR page 83, lines 16-19). On redirect examination, Ms. Shannon was asked about the evaluation of Dr. Weiss and showed that the minutes of the IEP Team meeting state a “re-evaluation done priv(ately)” but the “transcript uses the word “independent”, (TR page 84, lines 17-19).

The next witness called was Ms. Tracy Sumner who is currently the 6th grade teacher at the

Central Elementary School and also the Assistive Technology Director for Morgan County. Having been a teacher for seventeen (17) years with a Bachelors Degree in Elementary Education and a Masters Degree in Education. Ms. Sumner stated that she had attended the IEP Team meeting on March 10, 2000. She testified that the team discussed assistive technology for this student and what was going to be necessary for him in that regard and, "toward the end of the meeting, in fact, we were getting ready to adjourn and Ms. Shannon reminded everyone that (this student) was due for his three (3) year evaluation. And Ms. S., at that time, said that she was going to be getting a private--- or having a private evaluation and Ms. Shannon asked where was that going to be done and who was going to be doing that, and it didn't seem like it was--- I mean, it was just talk; we were not prepared to discuss that, it just kind of got into that conversation.... and then some other discussion went on, and I am not really sure exactly what was said there. And I am not sure of the wording on this, but Ms. Shannon said, and that is your right and--- to have a private evaluation, and it is our right to have an evaluation also. And I am not saying that word for word, but it was something along those lines, yeah.", (TR page 93, lines 21-25 thru page 94, lines 1-14). Ms. Sumner was asked if she as a member of the IEP Team ever heard Ms. Shannon say or recommend that the School System waive its' rights to evaluate this student and whether or not that was the understanding of the Team in general. Ms. Sumner responded, "no", (TR page 94, lines 19-22).

On cross-examination Ms. Sumner was asked if the discussion regarding Dr. Weiss was in the context of the three (3) year evaluation needing to be done to which Ms. Sumner responded, "uh-uh. Yeah, that discussion followed", (TR page 95, lines 25). Ms. Michelle asked, "was it your

understanding that Ms. S. was suggesting that the three (3) year evaluation be done by Dr. Weiss?" Ms. Sumner responded, "no." Ms. Michelle asked, "was it your understanding that it was something completely separate?" Ms. Sumner's response was, "Yeah. Because she said, well, now, how is that going to be done. And at some point she said, Ms. Shannon said, that, that is your right, or you can do that, and that we will be doing our own", (TR page 96, lines 1-11).

The School System next called Mr. Kerry Beard to testify. Mr. Beard is the Resource Teacher for Special Ed. and the 7th & 8th grade in his second, having been in Morgan County Schools for nine (9) years. Mr. Beard had also taught in the Maryville School System and for Peninsula Hospital. He received a Degree in Social Studies and a Special Education Degree as well as a Degree in Elementary Education.

Mr. Beard was asked to testify as to the minutes which he took at this March 10, 2000 meeting is Exhibit 2 in the record. He stated, "the majority of the meeting was spent talking about various kinds of technology for "this student".... and also we talked shortly at the end of the meeting about his re-evaluation which came due", (TR page 102, line 17-21). Mr. Beard was asked if his notes reflected anything regarding the re-evaluation to which he answered, "done privately," "I think is what I have." He was asked if it was the IEP Team's decision to waive the School Systems right to re-evaluate this student and allow the student to get a private evaluation to which he responded, "I don't recall ever discussing waiving any rights", (TR page 104, lines 3-4). Mr. Beard testified, "it is not unusual for parents sometimes to ask for somebody else to do an evaluation, you know, separate from our evaluation. That happened before. It's happened several times by various

parents”, (TR page 106, line 20-24). He further testified “well, a lot of times they’ll ask because they won’t know who could do an evaluation. Now, we can sometimes suggest, or Ms. Shannon will suggest certain people that they might want to speak to. It is not like asking our permission can they do it or not; its’ just a lot of times people don’t know all the ins and outs of what you can and can’t do, or they just might look to us for guidance or help of who can conduct that”, (TR page 107, line 3-10). Mr. Beard further testified....”I’m not sure that (Ms. S.) understood that she could go have an evaluation at anytime she wanted to. I am just guessing---I am guessing. I can’t tell you what the state of her mind was, but that’s kind of what I thought was going on. It was kind of like she wasn’t sure whether or not---what the procedure was, whether she had to go through some kind of procedure to get this done and fill something out or whatever”, (TR page 110, line 17-24).

Dr. Thomas Oakland was the next witness called for the School System. He testified extensively concerning his CV which is Exhibit 14 in the record. He testified regarding his credentials as a neuro-psychologist and being on the board that established the field (TR page 120). After Dr. Oakland extensive testimony with regard to his credentials, the Petitioners rested and the Respondents called the mother as their witness.

The mother testified that Ms. Washington of the East Tennessee Technology Access Center was running behind on March 10, 2000 and that Ms. Shannon, “stated at the beginning of the meeting that what (we) could talk about that didn’t concern the technology would be the re-evaluation, or the evaluation is how she stated it. She didn’t say re-evaluation, but she said evaluation”, (TR page 152, lines 12-16). The mother stated, “...I asked for an independent one”, (TR page 152, lines 22-23).

She further stated that, "... I was asking for Judith Weiss to do a evaluation, an independent evaluation", (TR page 153, lines 14-15). She also stated, "...I told her why. I said I felt that all the evaluations that the school had done before--- which I may not have said the school, I said, that we had done...that I had never had them tell me that he really--- if he really had dyslexia or not", (TR page 156, line 10-14). The mother was asked if any objections were ever raised to having Dr. Weiss conduct an evaluation. She responded, "no", (TR page 165). She was then asked, "why did you ask Ms. Shannon to use Dr. Weiss? Why would it even concern Carolyn Shannon? Answer---I just---felt like that, you know, since its an M-Team, that we all make a decision together, and I felt like I wanted her to know that I wanted to have an independent evaluation of my child, and so they would have a chance to either agree or disagree", (TR page 165, line 13-19). The mother was asked if it was her understanding that she had asked the IEP Team to allow Dr. Weiss to do the three (3) year evaluation, she answered, "right", (TR page 166, line 16).

On cross examination, the mother was asked about a piece of paper which she had testified to in her direct examination which was marked as Exhibit 17 regarding Judith Kaas-Weiss. Exhibit 17 shows that Dr. Kaas-Weiss is a licenced clinical psychologist. Ms. S. was asked if it states that she was a neuro-psychologist to which the mother replied, "no, it doesn't. But it does say psychologist", (TR page 173, line 14-15). Testimony was then closed and the parties made closing arguments.

FINDINGS OF FACT

From the testimony of the witnesses, their credibility determined, statements of counsel and

the Exhibits filed and made a part of the record herein, the Court finds as follows:

This appears to be a case of mistrust on the part of the parties along with mis-communication, which created misunderstanding. J.K.S. is a student enrolled in Morgan County Schools receiving Special Education and related services and as a result an IEP Team meeting was held on March 10, 2000. This meeting was to discuss assistive technology and a triennial re-evaluation. The evidence in the record shows that at the beginning of the meeting, the representative of East Tennessee Technology Assistance Center, Inc. was late and therefore, the parties discussed the re-evaluation of J.K.S. When the representative from ETTAC arrived, the discussion changed from the evaluation to assistive technology. The proof in the record shows that the meeting was scheduled for class time during the school day, therefore leaving only a certain amount of time for the teachers which caused the meeting to be adjourned prior to its' conclusion. The mother left the meeting with the impression that the School System had agreed to allow Dr. Judith Kaas-Weiss to conduct an evaluation of J.K.S. The only information in the record which the School System had with regard to Dr. Weiss is that she was a licensed clinical psychologist (Exhibit 17). From the testimony in the record, it is unclear as to what the School System anticipated Dr. Weiss' evaluation to be. However, there is no testimony that at the meeting anyone from the School System was under the impression that Dr. Weiss would perform a neuro-psychological evaluation. Subsequently, Ms. Michelle began writing letters to Ms. Shannon which indicated that the parents wanted the School System to pay for Dr. Weiss to do a neuro-psychological triennial evaluation. (Exhibit 3) The School System's response dated April 3, 2000 and subsequent thereto are clear that the School System immediately requested permission to

conduct the triennial evaluation with the parents' consent, and that they had received no disagreement as to any evaluation performed in the previous three (3) years. (Exhibit 4) The correspondence following it is clear that the School System desired to conduct a triennial evaluation with a neuro-psychologist of their own choosing and that the parents refused the request.

CONCLUSIONS OF LAW

The School Systems takes the position that they have an absolute right to evaluate a student who is receiving or is to receive Special Education and related services and that they have the right to use personnel of their own choosing. The parents argue that, "the central issue here is that the Special Education for Morgan County Schools does not know what she is doing." (Post Hearing Brief of K.S. page 1). The apparent difference of opinion appears to stem from discussions which have taken place between the School System representative and the parents and statements made at the March 10, 2000 IEP Team meeting and notes which were taken at that meeting. The School System argues that federal and state law would require the system to re-evaluate this student and that they may use a professional of their own choosing. The parents appear to be relying on some type of supposed waiver by the School System.

It is clear from the law that the IDEA requires School Systems to review a student's IEP and conduct a triennial re-evaluation at least once every three (3) years. 20 U.S.C. § 1414(a)(2). This is also reflected in Tennessee State Board of Education Rules, Regulations, and Minimum Standards § 0520-1-3.09 et seq.

The School System made a request to conduct a triennial evaluation. Though it may not have

been made in the usual fashion, the record is clear that the School System made the request and continued to make the request. 34 C.F.R. § 300.507-300.509 allows an agency to pursue an evaluation through a Due Process Proceeding if the parents refuse consent for a re-evaluation. It is even clear that Ms. Michelle is aware of this based on her letter dated April 6, 2000. If the parents of a child with a disability wish to avail themselves of Special Education services for that child, they must allow the School System the right to evaluate if the School System so chooses. Using a Due Process Proceeding has been upheld in numerous cases including Garcia vs. Town of Ridgefield Board of Education, EHLR 558:152(d.CT 1986). See also Dyersburg (TN) City School District, EHLR 553:164(OCR 1988).

The only way for a School System to determine what placement is appropriate for a child with disabilities is for the School System to conduct an evaluation. To preclude the School Systems from evaluating children with special needs would severely damage the ability of School Systems to perform their obligations as required by the IDEA. The School Systems right to re-evaluate such students has been recognized by Federal Courts for many years. Andress vs. Cleveland Independent School District, 64 F 3rd 176, 177 (5th Circuit 1995), Cert denied, ___ US ___ (1996). The Sixth Circuit in Rettig vs. Kent City School District, 720 Fed 2nd 463, 466, n.3 (6th Circuit 1984) showed that as a condition of receiving benefits under IDEA, parents could be required to permit the School District to evaluate a child. The Federal District Court in Illinois was recently affirmed when it ruled, “[I]t is beyond cavail that a School District has the right to conduct its’ own evaluation and ‘cannot be forced to rely solely on an independent evaluation conducted at the parents’ behest’”. Patricia P.

vs. Board of Education of Oak Park and River Forest High School District number 200, 8 F Supp 2nd 801 (N D Illinois 1998), citing Duneland, supra.

Even the Office of Special Education Programs for the United States Department of Education (OSEP) noted, “besides the comprehensive triennial evaluation required under Federal Regulation 300.534, a District may conduct private evaluations of a disabled child at its’ discretion at anytime.” 16 EHLR DEC.1076.

The Courts have recognized that the School System is allowed to use evaluators of its’ own choosing and that the parents can disagree with those evaluations and request independent evaluations be done subsequent to School Systems’ if they disagree. In Andress vs. Cleveland supra the Fifth Circuit Court of Appeals noted, “[I]t would be incongruous under the statute to recognize that the parents have a reciprocal right to an independent evaluation, but the School does not.” The Second Circuit held in Dubois vs. Connecticut State Board of Education, 727 F 2nd 44, 48 (2d Circuit 1984) that a “School System may insist on evaluations by qualified professionals who are satisfactory to the School System officials”. The same Court held similarly in Vander Malle vs. Ambach 673 F 2nd 49 (2d Circuit 1982).

It is obvious from the record that the School System did not waive and did not intend to waive its’ right to evaluate a student. Although the parents may have felt that that was the meaning behind what had transpired, the record clearly indicates that the School System intended to evaluate this child. The implication that the Special Education Committee minutes showing “re-evaluation done priv (ately)” does not constitute a waiver by the School System. Further, the testimony of the

School System personnel who were involved in the IEP Team meeting shows that they did not intend for their comments to be construed as a waiver. Additionally, a review of the audio tape (Exhibit 18) does not indicate that the School System personnel intended to waive their rights to a re-evaluation.

The IDEA allows the parents the chance to request an independent evaluation if they disagree with an evaluation which was performed on behalf of the School System. 20 U.S.C. § 1415(b). The School System had not had an evaluation performed, therefore, there was no evaluation for the parents to disagree with. Additionally, there is nothing in the record which indicates that the parents had disagreed with any evaluation performed in the previous three (3) years. The School System had contacted Dr. Thomas Oakland and requested that he be allowed to conduct the evaluation of this student. Dr. Oakland's C.V. is quite impressive and gives great weight to his ability to conduct a neuro-psychological evaluation. As stated previously, the School System has the right to use professionals if its' own choosing to conduct an evaluation.

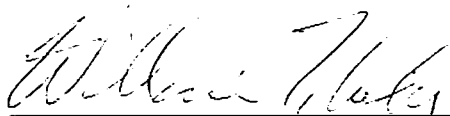
IT IS THEREFORE ORDERED that J.K.S. be evaluated by the appropriated professionals that the School System chooses.

Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee or may seek review in the United states District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order in non-reimbursement cases or three (3) years in cases involving education costs and expenses. In appropriate cases, the reviewing Court may order that this Final Order be stayed pending further hearing in the cause.

If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of section 49-10-601 of the Tennessee Code Annotated.

Within sixty (60) days from the date of this order (or thirty [30] days if the Board of Education chooses not to appeal, the local education agency shall render in writing to the District Team Leader and the Office of Compliance, Division of Special Education, a statement of compliance with the provisions of this order.

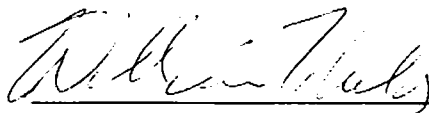
ENTER this the 23rd day of August, 2000.



WILLIAM T. AILOR
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been mailed, with sufficient postage affixed thereto, to WILLIAM WARD, Staff Attorney, Division of Special Education, Tennessee State Department of Education, Suzanne Michelle, attorney for student, and Melinda Baird, attorney for school system, at the addresses set forth on the Attachment to the Pre-Conference Order, on this the 23rd day of August, 2000.



WILLIAM T. AILOR